

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE COMMISSION,)	
)	
Petitioner,)	
)	
vs.)	No. 12-0384 RE
)	
MOSTAFA JAWADI,)	
)	
Respondent.)	

DECISION

Mostafa Jawadi is not subject to discipline.

Procedure

On March 13, 2012, the Missouri Real Estate Commission (“the MREC”) filed a complaint seeking to discipline Jawadi. On March 23, 2012, we served Jawadi with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. Two hearing settings were continued on Jawadi’s motions. On March 28, 2013, we held a hearing on the complaint. Assistant Attorney General Megan Kade Fewell represented the MREC. David F. Barrett represented Jawadi. The matter became ready for our decision on May 31, 2013, the date the last written argument was filed.

Findings of Fact

1. Jawadi is licensed by the MREC as a broker associate. Jawadi’s license is, and was at all relevant times, current and active.

2. Jawadi works as a broker associate for his own company, handling primarily residential properties.

Count I

3. On March 11, 2010, Jawadi was a member of the Multiple Listing Service. A property was listed with the Service at 2205 Corona Drive, Columbia, Missouri. This foreclosed property was owned by Freddie Mac Mortgage Company.

4. On March 11, 2010, Jawadi had an appointment to show this property to a client, and arrived before the appointment time to check on the condition of the property. He found broken wooden shelving that he believed to be trash in the corner of the garage. Jawadi's practice was to clean up trash in homes he showed. The shelves he discarded were broken and unfit to use. Jawadi placed the broken shelving in the back of his van, intending to get it out of the way and improve the chances of selling the house.

5. While Jawadi was waiting inside the house for his client, the police arrived at the property and arrested Jawadi. Jawadi believed that he was "set up" by a rival real estate professional.¹

6. On June 30, 2010, in the Boone County Circuit Court ("the Court"), the prosecuting attorney filed an information charging Jawadi with burglary:

The Prosecuting Attorney of the County of Boone, State of Missouri, upon information and belief, charges that the defendant:

COUNT I: In violation of Section 569.170, RSMo, committed the class C felony of burglary in the second degree, punishable upon conviction under Sections 558.011 and 560.011, RSMo, in that on or about March 22, 2010, in the County of Boone, State of Missouri, the defendant knowingly remained unlawfully in an inhabitable structure, located at 2205 Corona Drive, Columbia,

¹Tr. at 20.

Missouri and owned by Freddie Mac Mortgage Company, for the purpose of committing stealing therein.^[2]

7. On February 22, 2011, Jawadi pled guilty to one count of the Class C felony of burglary in the second degree. This was the first administrative complaint or criminal matter Jawadi had ever faced. Jawadi pled guilty because he was depressed and because he feared he would face prejudice because he is an Arab and a Muslim. He was advised to “let this thing slide by my life.”³

8. On April 4, 2011, the Court suspended imposition of Jawadi’s sentence and placed him on five years of supervised probation with conditions.

Count II

9. On April 6, 2011, Sarah Page with Robert Cirtin Investigations, who had been hired by the MREC to investigate Jawadi, sent a letter to Jawadi’s address at 1805 Blue Ridge Road, Columbia, Missouri, 65202. The letter, on Robert Cirtin Investigations stationary, stated:

Mr. Jawadi;

Our client, the Missouri Real Estate Commission has requested an investigation into your guilty pleading [sic] to burglary charges in Boone County.

Please contact me immediately so I can set up an interview with you to document the guilty pleading [sic] and disposition on this case.

Thank you,

Sarah Page^[4]

10. Sarah Page was not a licensed private investigator.

² Petitioner’s ex. 2. Count II was dismissed by the prosecutor.

³ Tr. at 22.

⁴ Exhibit A to Petitioner’s ex. 3.

11. As of April 6, 2011, Jawadi's address registered with the MREC was 1805 Blue Ridge Road, Columbia, Missouri, 65202.

12. Jawadi did not respond in writing or otherwise to the April 6, 2011, letter within 30 days or any time thereafter.

Conclusions of Law

We have jurisdiction to hear this case.⁵ The MREC has the burden of proving that Jawadi has committed an act for which the law allows discipline.⁶

I. Credibility

This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness.⁷ We believe Jawadi that he did not intend to commit the criminal offense of burglary – that he was merely hauling away what he thought (and by all accounts) was trash from the property.

II. Criminal Offense

Jawadi pled guilty to the crime of burglary in the second degree in violation of § 569.170.⁸ A guilty plea resulting in a suspended imposition of sentence does not collaterally estop the issue of whether Jawadi committed a criminal offense.⁹ A guilty plea is evidence of the conduct charged. The plea constitutes a declaration against interest, which the defendant may explain away.¹⁰

⁵ Section 621.045. Statutory references, unless otherwise noted, are to the 2012 Supplement to the Revised Statutes of Missouri.

⁶ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁷ *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992).

⁸ RSMo. 2000.

⁹ *Director of the Department of Public Safety v. Bishop*, 297 S.W.3d 96 (Mo. App., W.D. 2009).

¹⁰ *Nichols v. Blake*, 418 S.W.2d 188, 190 (Mo. 1967).

A person commits the crime of burglary in the second degree in violation of § 569.170¹¹ when he:

knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure for the purpose of committing a crime therein.

The question of how a real estate professional, who has an appointment to show a house that day, gets prosecuted for “knowingly” entering unlawfully or “knowingly” remaining unlawfully in that house to commit the crime of stealing broken shelving (trash) from a foreclosed residential home is a question we will not attempt to answer here. Small wonder Jawadi pled to the crime – after all he was a broker who entered a house immediately prior to his appointment to show the house to a potential seller. It is hard to see the unlawfulness in that act. The question of the shelving and its value or utility is a factual issue, and we believe Jawadi that it was trash.

Here, the finder of fact must determine if Jawadi’s testimony is sufficient to overcome his confession, which is a declaration against his interest. There was no other testimony or evidence¹² in opposition to Jawadi’s. His account of the situation is consistent with his job and we believe his testimony effectively explains away the guilty plea.

As stated above, we believe Jawadi’s testimony and do not find that he committed the criminal offense. But as we explain later in this decision, only some of the causes for discipline are based on his conduct in taking the shelving and whether we believe that he committed a criminal offense. Other subsections authorizing discipline are based solely on the crime to which Jawadi pled, without requiring consideration of his actual conduct.

¹¹ RSMo. 2000.

¹² Other than evidence of the guilty plea.

III. Cause for Discipline

Section 339.100.2 states:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

* * *

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

A. Violation of Regulation – Subdivision (15)

The MREC argues that Jawadi's conduct violated Rule 20 CSR 2250-8.170:

(1) Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

The MREC argues that the private investigator was its agent and thus Jawadi's failure to respond to Page's letter violated this regulation. Jawadi argues that Page is not a licensed private investigator and that this somehow nullifies the request for contact and a meeting. We find this argument is without merit. The MREC argues that with its authorization, anyone could send a letter making it clear that the MREC was requesting contact in order to schedule a meeting. We agree. Such a letter would clearly be a written request from the MREC, regardless of who typed it. But that is not what occurred in this case.

While the letter references the investigation, it is not **from the MREC**, nor does it request contact or a meeting **with the MREC**. Except for the reference to the agency as a client, the MREC is not even mentioned. In the letter on Robert Cirtin Investigations stationary, Page asks Jawadi to contact her about setting up a meeting with the private investigation firm in regard to **its** investigation. This is not the MREC's written request for anything. It is the private investigator's request to meet in order to pursue its investigation for its client, the MREC. Nothing we see in the letter would lead a reasonable person to believe that this was communication from the MREC, even if it referenced the MREC's investigation. Failure to respond to this letter did not violate 20 CSR 2250-8.170.

There is no cause for discipline under § 339.100.2(15).

B. Otherwise Grounds to Refuse Licensure – Subdivision (16)

The MREC argues that Jawadi is subject to discipline because he committed an act that would otherwise be grounds to refuse to issue a license. Section 339.040.1 provides in part:

1. Licenses shall be granted only to persons who present, and corporations, associations, or partnerships whose officers, associates, or partners present, satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing;
and

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

1. Good Moral Character

Good moral character is honesty, fairness, and respect for the law and the rights of others.¹³ We believed Jawadi's account of the underlying conduct that led to the guilty plea and that he did not commit the criminal offense. His conduct in pleading guilty and failing to respond to a letter from a private investigator is insufficient to find a lack of good moral character. There is no cause for discipline under § 339.100.2(16).

2. Reputation

Reputation is the "consensus view of many people[.]"¹⁴ Reputation is not a person's actions; it is "the general opinion . . . held of a person by those in the community in which such person resides[.]"¹⁵ Reputation means "the estimation in which one is generally held : the character commonly imputed to one as distinct from real or inherent character[.]"¹⁶ The MREC provided no evidence about Jawadi's reputation. There is no cause for discipline under § 339.100.2(16).

3. Competent

Competent is defined as "having requisite or adequate ability or qualities[.]"¹⁷ Jawadi's conduct in pleading guilty and failing to respond to a letter from a private investigator is insufficient to find a lack competence to transact the business of a broker or salesperson in such a

¹³ *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997).

¹⁴ *Haynam v. Laclede Elec. Coop.*, 827 S.W.2d 200, 206 (Mo. banc 1992).

¹⁵ *State v. Ruhr*, 533 S.W.2d 656, 659 (Mo. App., K.C.D. 1976) (quoting Black's Law Dictionary, Rev. 4th ed. 1467-68)).

¹⁶ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1929 (unabr. 1986).

¹⁷ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 253 (11th ed. 2004).

manner as to safeguard the interest of the public. There is no cause for discipline under § 339.100.2(16).

C. Criminal Offense – Subdivision (18)

The MREC argues that there is cause for discipline because Jawadi pled guilty to an offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is dishonesty, or for any offense involving moral turpitude.

As noted above, person commits the crime of burglary in the second degree in violation of Section 569.170 when he:

knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure for the purpose of committing a crime therein.

1. Reasonably Related

The MREC argues that the crime of burglary in the second degree is an offense reasonably related to the qualifications, functions and duties of a real estate broker. Reasonable relation is a low threshold, but not an open door to any offense to result in the discipline of a licensee. To relate is to have a logical connection.¹⁸

Real estate brokers sell real estate. They certainly enter real estate, but based upon an agreement to be there. However, the act of entering a structure for an unlawful purpose to commit a crime is no more reasonably related to Jawadi's business as a real estate broker than it is to any other profession or vocation. There is nothing particularly unique about being a real estate broker that makes the crime of burglary in the second degree reasonably related to it. Burglary is

¹⁸ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1050 (11th ed. 2004).

a common crime, and without evidence in the form of testimony, this crime is not found to be reasonably related to Jawadi's profession.

There is no cause for discipline under § 339.100.2(18).

2. Essential Element

The MREC argues that the crime of burglary in the second degree is an offense an essential element of which is dishonesty. An essential element is one that must be proven for a conviction in every case.¹⁹ Dishonesty is a lack of integrity or a disposition to defraud or deceive.²⁰ There was no conviction in this case. Burglary, unlike fraud, is a crime evident when it occurs. There can be no deception because it is an overt act readily apparent when committed. Burglary does not have dishonesty as an essential element. There is no cause for discipline under § 339.100.2(18).

3. Moral Turpitude

The MREC argues that the crime of burglary in the second degree is a crime involving moral turpitude. Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything 'done contrary to justice, honesty, modesty, and good morals.'^[21]

In *Brehe v. Missouri Dep't of Elementary and Secondary Education*,²² 213 S.W.3d 720 (Mo. App., W.D. 2007), a case which involved discipline of a teacher's certificate under § 168.071

¹⁹ *State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961).

²⁰ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

²¹ *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

²² 213 S.W.3d 720 (Mo. App., W.D. 2007).

for committing a crime involving moral turpitude, the court referred to three classifications of crimes:²³

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved.²⁴

We find that burglary is a Category 3 crime. Considering the factual circumstances of Jawadi’s conduct as we have set forth and discussed above, the crime did not involve moral turpitude. There is no cause for discipline under § 339.100.2(18).

D. Other Conduct – Subdivision (19)

The MREC argues that Jawadi is subject to discipline under § 339.100.2(19) for “any other conduct which constitutes untrustworthy, improper or fraudulent business dealings or demonstrates bad faith or gross incompetence[.]” The adjective “other” means “not the same : DIFFERENT, any [other] man would have done better[.]”²⁵ Therefore, subdivision (19) refers to conduct different than referred to in the remaining subdivisions of the statute.

We have found that Jawadi did not commit the crime of burglary. The “other” conduct – pleading guilty to a crime and failing to respond to a letter from a private investigator – does not

²³ 213 S.W.3d at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

²⁴ *Id.*

²⁵ WEBSTER’S THIRD INTERNATIONAL DICTIONARY 1598 (unabr. 1986).

constitute untrustworthy, improper or fraudulent business dealings or demonstrate bad faith or gross incompetence. Therefore, we find no cause for discipline under 339.100.2(19).

Summary

There is no cause for discipline under § 339.100.2(15), (16), (18) or (19).

SO ORDERED on September 12, 2013.

\s\ Nimrod T. Chapel, Jr.

NIMROD T. CHAPEL, JR.

Commissioner